

EXPERT PLANNER REBUTTAL REPORT PREPARED FOR DEFENDANTS

Civil Action No. 20-CV-4728-MCA-MAH

NOVEMBER 9, 2023

Emerson Redevelopers Urban Renewal LLC
(Plaintiff)

v.

Borough of Emerson, NJ
& Danielle DiPaola (Defendants)

Prepared by:
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Expert Planner Report
Civil Action No. 20-CV-4728-MCA-MAH

Prepared For
Defendants

November 9, 2023

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EXHIBIT	TITLE
1	At Risk Population
2	Community Summary
3	Income by Block Group
4	Population Density
5	What's In My Community

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1.0 EXECUTIVE SUMMARY

This report is prepared by Preferred Planning Group LLC on behalf of the defendants in the matter of Emerson Redevelopers Urban Renewal LLC (Plaintiff) v. Borough of Emerson, New Jersey and Danielle DiPaola (Defendants) in Civil Action No. 20-CV-4728-MCA-MAH, pending in United States District Court. Preferred Planning Group LLC was retained as an Expert Professional Planner to prepare this report to rebut Plaintiff's expert. The Plaintiff has submitted a report entitled "Impact of Exclusionary Zoning in Emerson", prepared by Art Bernard and Associates, LLC, dated June 2023, referred to in this report as the "Bernard Report".

The Bernard Report attempts to support the Plaintiff's assertion that the Defendants have delayed the progress of Plaintiff's inclusionary affordable housing project, known as "Block 419" (ERUR Community) "to prevent racially diverse minorities from moving into Emerson, which Defendants connect to Mt. Laurel low-income housing. "(see Complaint, Paragraph 12, Page 5).

A. Bernard Report Summary. The Bernard Report presents an extremely narrow focus, relying on the following arguments to support the assertion of Defendants supposed intent to exclude low income and racially diverse residents:

1. Housing Stock. Emerson has a "very homogenous housing stock" and, as of 2022, "there are no deed restricted affordable housing units in Emerson" (see Bernard Report, page 4).
2. Rental & Race. "Emerson is a community with few rentals" (See Bernard Report, page 9) and "14.5% of the population is African American or Hispanic" (See Bernard Report, page 10).
3. Existing Affordable Units. "The New Jersey Guide to Affordable Housing has no record of any affordable housing within the Borough" (See Bernard Report, page 10).

The Bernard Report speculates that the proposed affordable units in the Plaintiff's proposed Block 419 community will "target those who have been excluded from Emerson and other communities in the past" (see Bernard Report, page 11). The report opines that the "percentage of African Americans and Hispanics occupying the affordable units in the ERUR community will be much more representative of these minority populations currently living in the housing region than the very low percentage of African American and Hispanics living in Emerson" (page 11).

The Bernard Report has several deficiencies, but the most concerning one is the total failure to acknowledge the existing affordable housing developments in the Borough of Emerson. A summary of the shortcomings of Plaintiff's Expert Report is identified as follows.



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B. Deficiencies in Bernard Report. We note the following deficiencies with the Bernard Report:

1. Evolving Diversity. Plaintiff's Expert fails to acknowledge the Borough's emerging trends on race/ethnicity, rental units and income because the Bernard Report uses outdated information. The Bernard Report contains no projections and fails to provide an accurate analysis of the Borough's increasing diversity. The Bernard Report relies solely on the 2017-2021 American Community Survey data, published by the United States Census Bureau, which is a static snapshot of conditions at one point in time. As such, it fails to identify the ongoing trends impacting the Borough's progress in diversity.
2. Existing Affordable Housing. The Bernard Report claim that no affordable housing exists in Emerson is false. In fact, there are 33 units of affordable rental units in the Borough. These units include affordable rental dwelling units for developmentally disabled, veterans and domestic violence survivors. This information is presented in the Court Master's Report on Compliance, as well as the Borough's Settlement Agreement with Fair Share Housing Center, but this information is completely omitted by Plaintiff's Expert.

The completed, and occupied, supportive rental units in group living arrangements located throughout the Borough, satisfy the bulk of the Borough's fair share obligation. The Borough's efforts have successfully integrated affordable rental housing within well established, and fully developed, residential neighborhoods. One can safely assume these are not exclusively characterized by white racial occupants.

3. Zoning Regulations Advancing Affordable Housing. Although the Borough has implemented several affordable housing ordinances to implement inclusionary housing, none of these zoning regulations are referenced in the Bernard Report. The Borough's set-asides for inclusionary development are 15% and 20%, depending on whether the development is rental or for sale units. Moreover, the permitted residential densities in some of these overlay zones are four to six times the developed densities of the most densely populated block groups in the community.

This rebuttal report, prepared for Defendants, provides an analysis of the rapid progress the Borough has made towards diversity and compliance with the Mt. Laurel doctrine. This legal framework requires communities to provide their fair share of affordable housing and, in concert with the Federal Fair Housing Act, prohibit discrimination on the basis of race, color, religion, national origin, sex, familial status and disability. The Borough of Emerson is compliant with the Mt. Laurel doctrine, has identified its fair share of the region's affordable housing, has constructed compliant housing for low- and moderate-income residents, and has removed exclusionary zoning barriers to facilitate various housing types.

Current demographic information and projections through 2028, presented herein, support Defendants rebuttal to the Bernard Report's assertions, omissions and false statements.

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C. Defendants Rebuttal to Bernard Report. This report, on behalf of Defendants, contains current information on housing and population, including projections to 2028, that indicate the Borough is making substantial progress in advancing diversity and rental housing opportunity. Facts supporting this are highlighted below.

1. Increased Rental Housing Stock. The proportion of rental units in Emerson has increased sharply since 2010, and is projected to continue this trend through 2028. The data indicate rental occupied housing units comprised 11.3% of housing units in 2010 and will reach 17.3% of units by 2028.
2. Population Diversity. The percentage of Emerson's population represented by residents of Hispanic origin is projected to reach 15.7% of the population by 2028, whereas in 2010 it was only 8.4%. Even more notable is the percentage of population identifying as two or more races, which was 1.7% in 2010, will jump to 10.2% by 2028.

Consequently, the Borough's Diversity Index, or the probability that two people from the same area will be from different race or ethnic groups, will continue its upward trajectory to approach that of the US by 2028.

The racial evolution of the general population is also reflected in NJ State Department of Education statistics on student groups by race in the Borough's three public schools. In fact, the Memorial School (Pre-K thru Grade 3) now has a 40% non-white student body.

3. Completed & Zoned Affordable Housing. The Borough has focused its early actions to promote affordable housing on the disabled, veterans, domestic violence survivors and family rentals. These housing arrangements are in developed residential neighborhoods and provide housing in 33 affordable units.

Zoning has also been implemented to allow for additional inclusionary developments at densities 4 to 6 times greater than the highest population densities of existing block groups in the community.

In conclusion, the Bernard Report fails to recognize the substantial number of affordable housing units already built in the community and the fact that the Borough's land use policies comply with the Mt. Laurel doctrine and Fair Housing Act.

Although a fully developed community, the Borough has effectuated a variety of affordable housing, including supportive living arrangements and rental housing, to continue its upward trajectory on diversity in the racial composition of residents and housing types. Therefore, we see no evidence of Plaintiff's assertion of Defendant's goal "to prevent racially diverse minorities from moving into Emerson, which Defendants connect to Mt. Laurel low-income housing. "

Details supporting our conclusion are provided in the following sections of this report.

DEFENDANT EXPERT PLANNER REPORT (REBUTTAL) IN THE MATTER OF ERUR LLC V. BOROUGH OF
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2.0 BOROUGH OVERVIEW

The Borough of Emerson is in the northern portion of Bergen County, approximately thirty miles northwest of New York City. The Borough occupies 2.42 square miles and is part of the Pascack Valley region of Bergen County, NJ. The community adjoins the following eight municipalities: Closter, Harrington Park, Haworth, Oradell, Paramus, River Vale, Washington Township and Westwood.

The Borough is served by mass transit, including bus lines and a NJ Transit rail station in the center of the community. Commercial development is concentrated along Kinderkamack Road, a north-south County Road (CR 503). Retail and service uses, along with the US Post Office, are located along the Kinderkamack Road corridor. The commercial and transit facilities are about a fifteen-minute walk from the outermost residential neighborhoods of the community.

The Borough's population experienced expansive growth during the 1960's and peaked at 8,428 persons in 1970, based on US. Census Bureau population figures. The number of residents declined after that to a low of 6,930 persons in 1990 and has increased very slightly over the past three decades. The population for Emerson NJ in 2023 is estimated to be 7,273 residents, representing a gain of only 343 residents since 1990.

The median year built for housing is 1959, indicating the increase in housing stock during the population gain of the 1960's. Additionally, 12.8% of the Borough's housing stock was constructed in 1949 or earlier.

The community is a fully developed, mature suburb with an estimated household size of 2.88 persons per household. The community has a median age for residents of 46.3 years of age.

The local Board of Education operates three public schools with a total student enrollment of 1,062 pupils in the 2021-2022 school year.

3.0 COMMUNITY DIVERSITY

Unlike the Bernard report, our report does not rely on the 2017-2021 American Community Survey (ACS) data because it does not contain current data, nor does it provide projections of community characteristics. For our analysis, we rely on ESRI Business Analyst information which provides up to date data and projections known to be accurate and comprehensive. ESRI data is used worldwide by governments, nonprofits and businesses to assess current and future conditions. ESRI updates demographics quarterly, captures demographic change for small areas, including block level, and provides forecasts through proprietary algorithms.

Using ESRI data, our report presents demographic information, including projections to 2028, which illustrate the evolution of Emerson into a diverse and inclusionary community.



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3.1 Housing Unit Occupancy

The Bernard Report fails to identify the Borough's increase in rental housing units occurring from 2010 onward. ESRI estimates that the number of rental units is steadily increasing in the community and will increase substantially by 2028, from 11.3% of the housing stock to 17.3%. This represents a projected gain of 182 rental units which will increase housing affordability in the community.

1.0 Housing Unit Occupancy (2010-2028) Emerson, NJ

Housing Units	2010	2023	2028
Owner Occupied	2,189 85.9%	2,130 82.4%	2,143 78.8%
Renter Occupied	288 11.3%	353 13.3%	470 17.3%
Vacant	72 2.8%	102 3.9%	105 3.9%
Total	2,549 100%	2,585 100%	2,718 100%

Source: US Census Bureau, ESRI Forecasts 2023 & 2028

3.2 Ethnic Mix & Diversity Index

The following shows the projected racial and ethnic composition of the Borough's residents from 2010 through 2028. The most notable trends are the decline of the white population and the increase of the Hispanic Origin and multiracial populations within Emerson.

The white population is projected to decline from 87.3% in 2010 to 71.2% in 2028. In contrast, the Hispanic Origin population is projected to almost double from 8.4% in 2010 to 15.7% in 2028.

The multiracial population is projected to grow by almost tenfold, from 1.7% in 2010 to 10.2% in 2028. This expansion is due to a number of factors, including the increasing number of interracial marriages and the increasing acceptance of multiracial identities.

The overall diversity index of the Borough will increase from 34.8 in 2010 to 60.8 in 2028. This increase is due to the changing racial and ethnic composition of the community and decline of the white population.



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2.0 Race, Ethnicity & Diversity (2010-2028)
Emerson, NJ

Race	2010	2020	2023	2028	Percent Change 2010 – 2028
White Alone	87.3%	75.6%	74.2%	71.2%	-16.1%
Black Alone	1.1%	1.6%	1.7%	1.8%	+0.7%
American Indian Alone	0.0%	0.3%	0.3%	0.3%	+0.3%
Asian Alone	8.6%	9.9%	10.5%	11.3%	+2.7%
Pacific Islander Alone	0.1%	0.0%	0.0%	0.0%	-0.1%
Some other Race Alone	1.2%	4.0%	4.2%	5.3%	+4.1%
Two or More Races	1.7%	8.7%	9.2%	10.2%	+8.5%
Hispanic Origin	8.4%	13.0%	13.8%	15.7%	+7.3%
Total Population	7,389	7,290	7,273	7,611	+222
Diversity Index	34.8	54.3	56.4	60.8	+26

Source: US Census Bureau & ESRI Forecasts 2023 & 2028

Hispanic Origin can be any race.

The Diversity Index is the probability that two people from the same area will be from different races or ethnic groups. The US has a diversity index of 72.1.

3.3 At Risk Population

It is important to consider a wide range of factors when evaluating diversity and inclusion within a community. The Bernard Report focuses solely on housing type, income, and race but omits other relevant factors. Other factors that should be considered include language, disability, and income below the poverty line.

In 2023, 5% of the Borough's 2,483 households have an income below the poverty line and approximately 17.8% of households are disabled. Other at-risk groups include almost 5% of households with no vehicle available and senior citizen households. Language is a barrier for a portion of the population, with 6% of residents speaking a language other than English, either with no English, or not able to speak English well.

People who live in poverty, have disabilities, or lack transportation reside in the Borough but are not included in the Bernard Report.



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3.4 Public School Data

The ESRI demographic analysis of race and economic conditions corresponds to the data available from the New Jersey Department of Education for the Emerson School District. The local Board of Education has three public schools as follows:

3.0 Emerson Public Schools

School	Grades	2021-22 Enrollment
Memorial School	Pre-K thru 3	371
Patrick M. Villano	4 thru 6	232
Emerson Jr-Sr High School	7 thru 12	459

Source: NJ Department of Education

The following summary of State Department of Education data for the district schools indicates a decrease in white student enrollment throughout the district, during the past three academic years. At the same time, Hispanic enrollment, and students identifying as multiracial, has increased. The percentage of economically disadvantaged students has also increased, especially among younger students.

3.1 Memorial School, Racial & Economic Characteristics

Race	2019-20	2020-21	2021-22
White	60.4%	61.0%	59.3%
Hispanic	20.8%	20.7%	21.3%
Black or African American	2.1%	2%	1.9%
Asian	10.8%	10.5%	10.5%
Native Hawaiian or Pacific Islander	0.0%	0.0%	0.0%
American Indian or Alaska Native	0.0%	0.0%	0.0%
Two or More Races	5.9%	5.9%	6.7%
Economically Disadvantaged Students	6.3%	5.6%	7.5%

Source: NJ Department of Education

Economically disadvantaged students are eligible for free or reduced meals.



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3.2 Patrick M. Villano School, Racial & Economic Characteristics

Race	2019-20	2020-21	2021-22
White	66.2%	64.4%	62.1%
Hispanic	20.2%	19.8%	23.3%
Black or African American	1.2%	1.6%	0.9%
Asian	9.4%	10.3%	9.5%
Native Hawaiian or Pacific Islander	0.3%	0.4%	0.0%
American Indian or Alaska Native	0.3%	0.0%	0.0%
Two or More Races	2.4%	3.6%	4.3%
Economically Disadvantaged Students	6.3%	5.6%	7.5%

Source: NJ Department of Education

Economically disadvantaged students are eligible for free or reduced meals.

3.3 Emerson Jr-Sr High School, Racial & Economic Characteristics

Race	2019-20	2020-21	2021-22
White	73.7%	72.4%	69%
Hispanic	14.8%	17.9%	18.3%
Black or African American	1.3%	0.9%	2.0%
Asian	8.4%	6.4%	7.2%
Native Hawaiian or Pacific Islander	0.4%	0.4%	0.7%
American Indian or Alaska Native	0.0%	0.2%	0.2%
Two or More Races	1.5%	1.8%	2.6%
Economically Disadvantaged Students	6.5%	6.4%	6.3%

Source: NJ Department of Education

Economically disadvantaged students are eligible for free or reduced meals.



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4.0 EMERSON'S AFFORDABLE HOUSING IMPLEMENTATION

The Borough has focused on supportive and alternative arrangement housing and effectuated the completion of 33 units to date. The zoning regulations have been revised to include multiple overlay provisions to enhance the construction of affordable housing. These successes are identified in the following sections.

4.1 Completed Affordable Housing Developments

A variety of affordable housing has been constructed in the Borough, serving the needs of a diverse population of low- and moderate-income residents. The developments are summarized below.

4.0 Existing Affordable Housing, Emerson, NJ

Development & Street Address	Type	Block/Lot	Dwelling Units
1. Veterans Affordable Housing 324 Main St.	100% Affordable	304/3	14 units
2. New Concepts for Living 43 Emerson Plaza West	100 % Affordable	417/2 & 3	5 units
3. Advanced Opportunities 5 Pine Dr.	100% Affordable	313/7	3 units
4. Emerson Grand 55 Emerson Plaza East	Inclusionary Family Rental	616/16	4 units
5. Center for Hope & Safety Confidential Location	100 % Affordable	Confidential Location	7 units
Total Affordable Units Completed			33 units

Source: Settlement Agreement, Fair Share Housing Center, dated November 21, 2017

4.2 Zoning for Affordable Housing

The Borough has implemented several zoning regulations to promote the redevelopment of sites with affordable housing. Due to its character as a developed post war suburb, the future opportunities for affordable housing will be implemented via overlay zones. The Borough has implemented zones near transit and commercial services for densities far beyond existing densities in residential zones. The existing zones for affordable housing are summarized in the following table.



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4.1 Affordable Housing Zones, Emerson, NJ

Zone	Purpose	Requirement
AHO Affordable Housing Overlay §290-13	Create a realistic opportunity for the construction of low- and moderate-income housing as land becomes available for development in Emerson and thereby addresses the “unmet need” portion of the fair share housing obligation of the Borough of Emerson under the New Jersey Fair Housing Act of 1985	Applies to any nonresidential property with a zone change or use variance for multifamily residential development of at least 6 units per acre, yielding at least 5 dwelling units. Rental set-aside = 15% Sale unit set-aside = 20%
CBD-10 & CBD-15 §290-68	Provide multifamily dwelling units	Multifamily residential dwellings above at grade retail, commercial and other principal permitted uses. Multifamily residential dwellings at grade only where they front Lincoln Boulevard and only in areas where the building is behind a building that fronts on Kinderkamack Road
ML-10 §290-17	Provide mechanism for affordable housing implementation	In consideration for increased density permitted in the ML-10 zone, the owner wishing to develop said lands shall contribute to the need for low- and moderate-income housing in Emerson. The ordinance provides for a 20% set aside for low- and moderate-income units
MS-AHO Municipally Sponsored Affordable Housing Overlay Zone §290-17.2	To provide for the construction by the nonprofit or public sector of alternate living arrangement housing that is 100% affordable to low- and moderate-income persons to address a portion	6.5 units per acre density for alternate living arrangements



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	of the Fair Share obligation of the Borough of Emerson and the NJ Fair Housing Act, the COAH regulations and the Mount Laurel Doctrine.	
Multifamily Residential Affordable Housing Overlay §290-17.4	To encourage the revitalization of the areas surrounding the Central Business District and to provide for the construction of low- and moderate-income persons in order to address a portion for the fair share obligation of the Borough of Emerson under the Fair Housing Act, the COAH regulations and the Mount Laurel Doctrine.	Mixed use building Density 64 du/ac MFRAH North Density 43 du/ac MFRAH South Required set-aside: 15% rental & 20% for sale
R-2/ARC Age Restricted Community Residence §290-17.3	Multifamily age restricted, age 55 or older per Federal Fair Housing Act	36 du/ac For every 10 units, required contribution to Borough affordable housing trust fund
Article XII Affordable Housing Regulations	Monitoring, Rehabilitation, Alternative Living arrangements, Inclusionary development, phasing schedule, new construction, utilities, controls on affordability, affirmative marketing, control periods, eligibility, administrative agent, enforcement occupancy standards	

Source: Borough of Emerson Zoning Ordinance



5.0 CONCLUSION

The Borough has constructed a variety of affordable housing units and implemented zoning regulations to ensure continued compliance with the Mt. Laurel doctrine and the Fair Housing Act.

The demographic data set forth in our rebuttal report identifies a notable, and sustained, progression toward expanding racial diversity and increased rental housing options to serve the needs of New Jersey's low- and moderate-income residents.

Based on our analysis, Plaintiff's allegation that Defendants seek to "prevent racially diverse minorities from moving into Emerson, which defendants connect to Mt. Laurel low-income housing" is not supported by the facts.

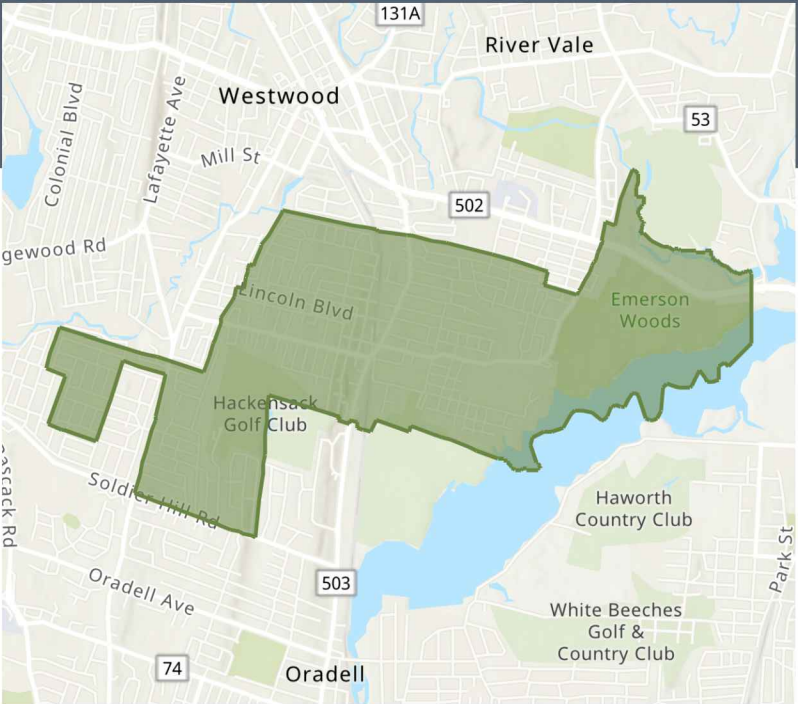
The Borough is a mature developed suburb, with virtually no population growth over the past three decades, and no vacant unconstrained land. Despite this, the community has constructed a substantial amount of its affordable housing obligation, created overlay zones for redevelopment, and has a population evolving into a diverse community, inclusive of all residents. Projections indicate the positive demographic and housing change underway will continue through 2028.



EXHIBITS

- 1 At Risk Population
- 2 Community Summary
- 3 Income by Block Groups
- 4 Population Density
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AT RISK POPULATION PROFILE

Emerson Borough, NJ



Geography: Place

7,273

Population

2,483

Households

2.88

Avg Size Household

46.3

Median Age

\$130,968

Median Household Income

\$613,287

Median Home Value

229

Wealth Index

77

Housing Affordability

56

Diversity Index

AT RISK POPULATION



442

Households With Disability



1,641

Population 65+



121

Households Without Vehicle

POVERTY AND LANGUAGE



5%

Households Below the Poverty Level



117

Households Below the Poverty Level



0

Pop 65+ Speak Spanish & No English

POPULATION AND BUSINESSES



6,343

Daytime Population



241

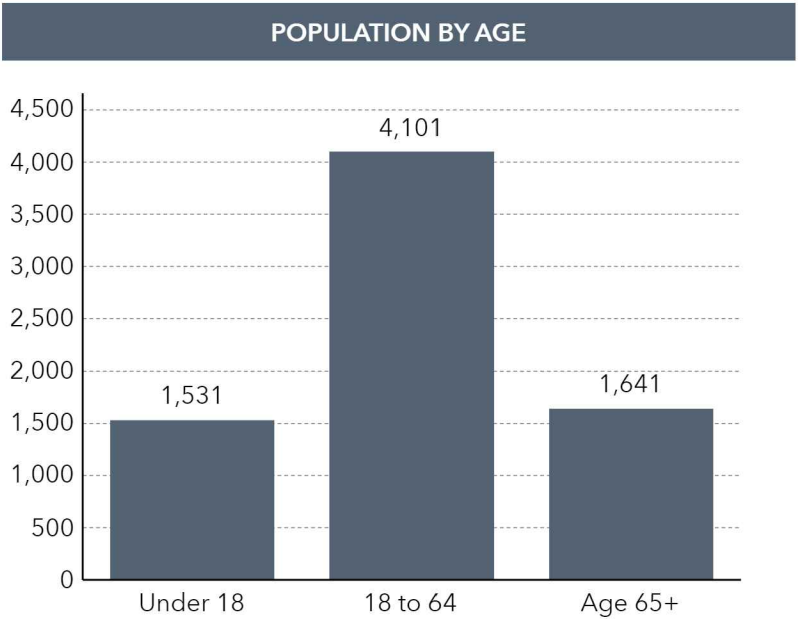
Total Businesses



2,877

Total Employees

Language Spoken (ACS)	Age 5-17	18-64	Age 65+	Total
English Only	818	3,010	1,303	5,131
Spanish	53	297	36	386
Spanish & English Well	53	226	17	296
Spanish & English Not Well	0	71	19	90
Spanish & No English	0	0	0	0
Indo-European	107	333	196	636
Indo-European & English Well	107	333	191	631
Indo-European & English Not Well	0	0	5	5
Indo-European & No English	0	0	0	0
Asian-Pacific Island	59	509	98	666
Asian-Pacific Isl & English Well	59	497	93	649
Asian-Pacific Isl & English Not Well	0	12	0	12
Asian-Pacific Isl & No English	0	0	5	5
Other Language	23	92	33	148
Other Language & English Well	23	73	14	110
Other Language & English Not Well	0	0	19	19
Other Language & No English	0	19	0	19



Source: Esri, ACS, Esri-Data Axle. Esri forecasts for 2023, 2028, 2017-2021.

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REV.	DATE	DESCRIPTION

PROJECT No.2023-119

DATE: 10/09/23

DRAWN BY: EP

BOROUGH OF EMERSON

FIGURE 1

AT RISK POPULATION

BERGEN CO., NJ

COMMUNITY SUMMARY

Emerson Borough, NJ

Geography: Place



13.8%
Services

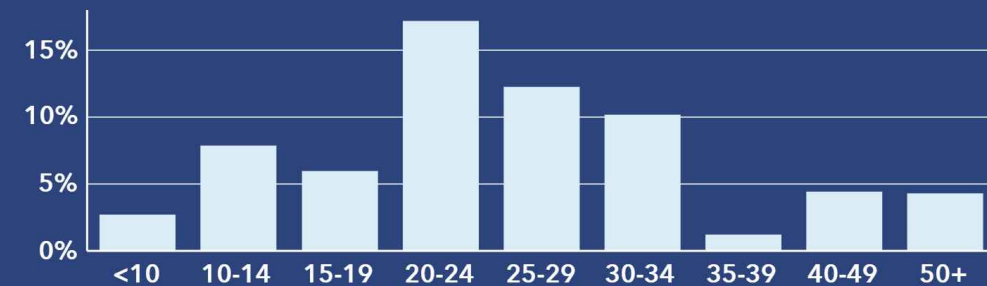


7.3%
Blue Collar

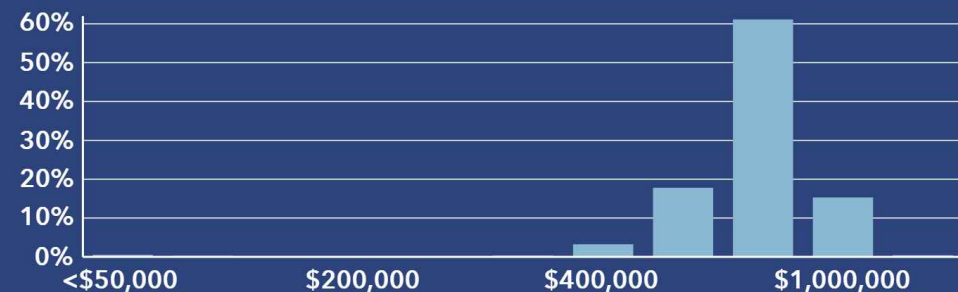


78.9%
White Collar

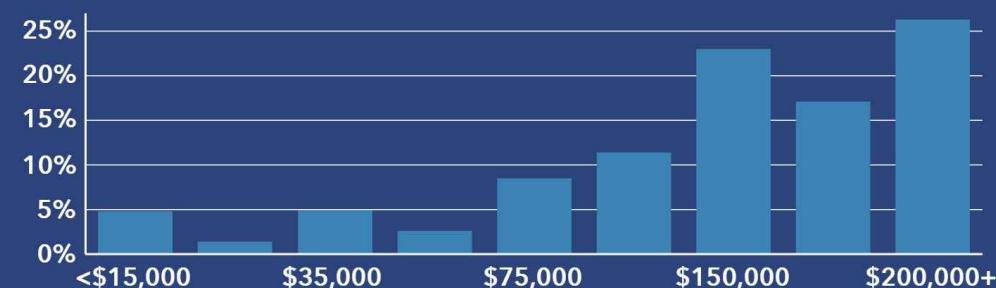
Mortgage as Percent of Salary



Home Value



Household Income

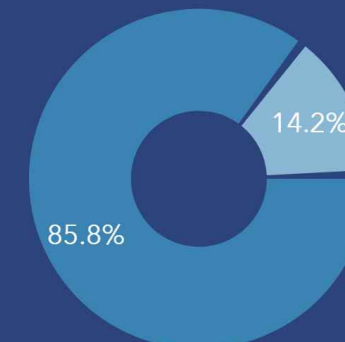


Age Profile: 5 Year Increments



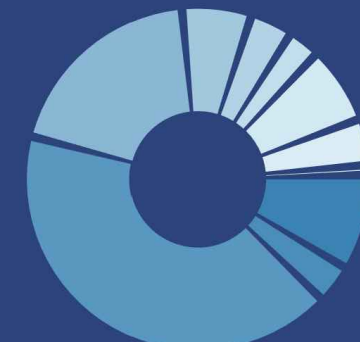
Dots show comparison to 34003 (Bergen County)

Home Ownership



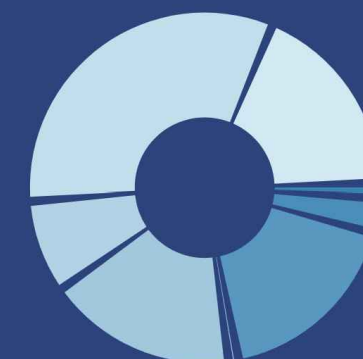
● Own ● Rent

Housing: Year Built



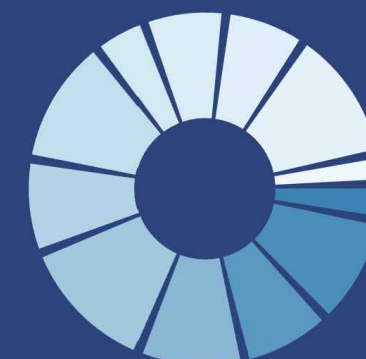
● <1939 ● 1940-49 ● 1950-59
● 1960-69 ● 1970-79 ● 1980-89
● 1990-99 ● 2000-09 ● 2010-19
● ≥ 2020

Educational Attainment



- < 9th Grade
- HS Diploma
- Some College
- Bach Degree
- No Diploma
- GED
- Assoc Degree
- Grad Degree

Commute Time: Minutes



● < 5 ● 5-9 ● 10-14
● 15-19 ● 20-24 ● 25-29
● 30-34 ● 35-39 ● 40-44
● 45-59 ● 60-89 ● 90+



Source: Esri, ACS. Esri forecasts for 2023, 2017-2021, 2028.



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REV	DATE	DESCRIPTION

COMMUNITY SUMMARY

BOROUGH OF EMERSON

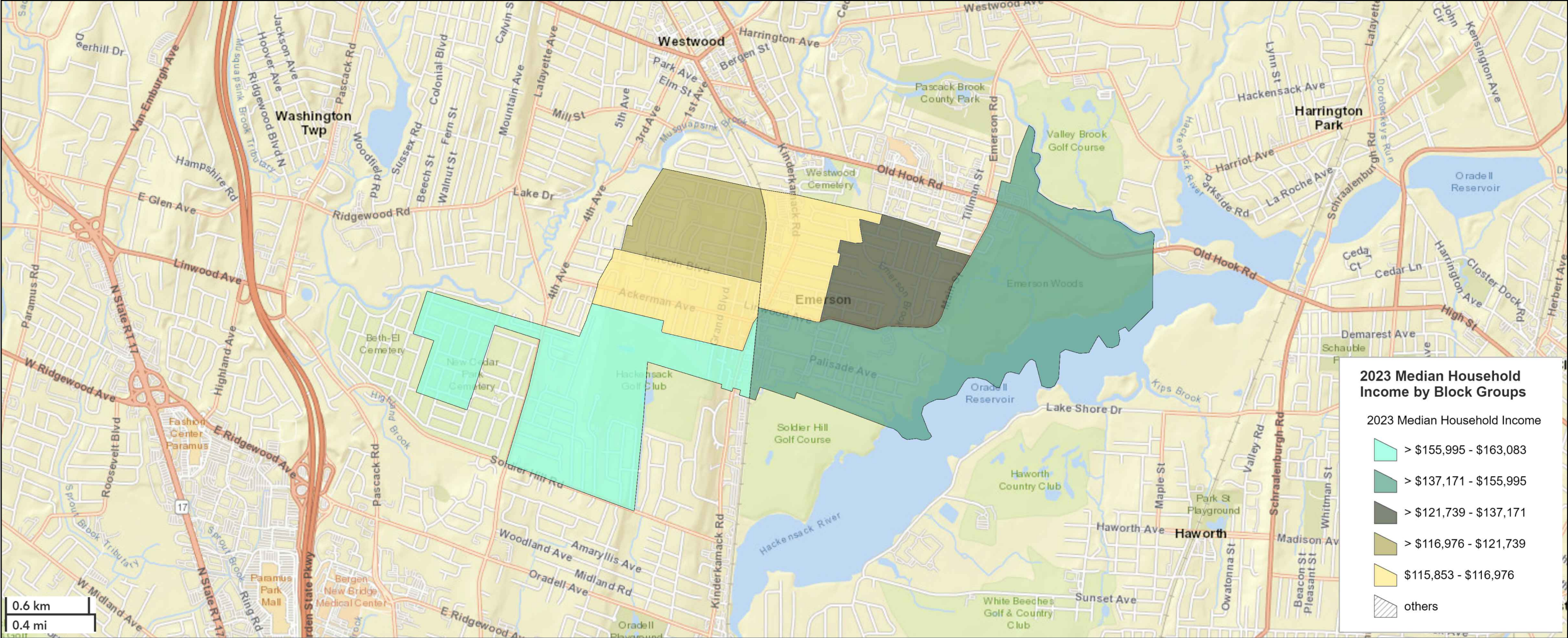
BERGEN CO., NJ

PROJECT No.2023-119

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FIGURE 2



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REV.	DATE	DESCRIPTION

BOROUGH OF EMERSON

BERGEN CO., NJ

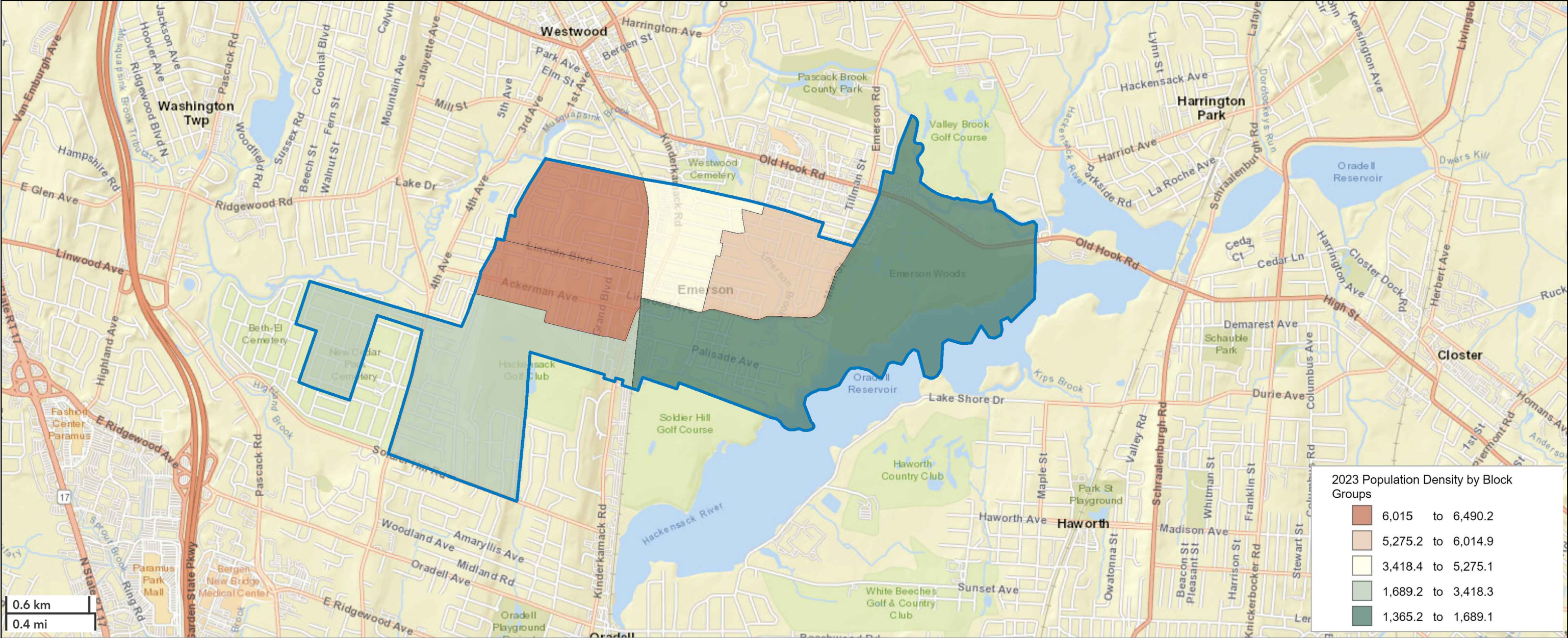
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INCOME BY BLOCK GROUP

FIGURE 3



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BOROUGH OF EMERSON

FIGURE 4

POPULATION DENSITY

BERGEN CO., NJ



What's in My Community?

Places that make your life richer and community better

Emerson Borough, NJ
Emerson Borough, NJ



This infographic was inspired by the visionary [Plan Melbourne](#) and the hyper proximity 15-minute City concept. Points of interest are grouped into civic themes which contribute to livability and community engagement.

Points of interest are sourced from [Foursquare](#) and updated quarterly. Each category shows a max of 1250 locations.

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WHAT'S IN MY COMMUNITY

BOROUGH OF EMERSON

BERGEN CO., NJ

FIGURE 5